IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL NOS.1 AND 444 OF 2004 AND

WRIT APPEAL NO.1071 OF 2004

WRIT APPEAL NO : 1 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26/09/2003 in WP NO : 4316 OF 2003 on the file of the High Court.)

Between:

1 Smt. Rukia Begum W/o.Late Burhan Khan
R/o. 22-3-638/1/4, Purana Haveli, Hyderabad.
2 Smt. Shamsunnisa Begum W/o. M.A.Jabbar
R/o. 22-3-638/1/4, Purana Haveli, Hyderabad.

..... APPELLANT(S)

AND

1 Municipal Corporation of Hyderabad rep., by its Commissioner & Special Officer, at Tank Bund Road,
Hyderabad.
2 The District Collector, Hyderabad, District at Hyderabad.
3 The Mandal Revenue Officer, Asifnagar Mandal, Hyderabad District.

.....RESPONDENT(S)

For the Appellant:MR.N.SRIDHAR REDDY, advocate

For the respondent No.1: Sri Ganta Rama Rao, advocate

For the Respondent No. 2 and 3 : GP FOR REVENUE

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WRIT APPEAL NO.444 OF 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26/09/2003 in WP NO : 4316 OF 2003 on the file of the High Court.)

Between:

Municipal Corporation of Hyderabad, rep. by its Commissioner, Tank Bund Road, Hyderabad.

..... APPELLANT

AND

1 Smt.Rukia Begum, W/o. Late Burhan Khan,
R/o.22-3-638/1/4, Purana Haveli, Hyderabad.
2 Smt.Shamsunnisa Begum, W/o. M.A.Jabbar,
R/o.22-3-638/1/4, Purana Haveli, Hyderabad.
3 The District Collector, Hyderabad District at Hyderabad.
4 Mandal Revenue Officer, Asifnagar Mandal, Hyderabad District.

.....RESPONDENT(S)

For the Appellant:MR.RAMA RAO GANTA

For the Respondent No.1 and 2 : MR.N.SRIDHAR REDDY, advocate

For the respondent Nos.3 and 4: GP for Revenue

W.A.SR.NO.56734 OF 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26/09/2003 in WP NO : 4316 OF 2003 on the file of the High Court.)

BETWEEN

1. The District Collector, Hyderabad District at Hyderabad.
2. Mandal Revenue Officer, Asifnagar Mandal, Hyderabad District

Appellants/Respondents

And

1. Smt.Rukia Begum, W/o. Late Burhan Khan,
R/o.22-3-638/1/4, Purana Haveli, Hyderabad.
2 Smt.Shamsunnisa Begum, W/o. M.A.Jabbar,
R/o.22-3-638/1/4, Purana Haveli, Hyderabad.

3. Municipal Corporation of Hyderabad, rep. by its Commissioner, Tank Bund Road, Hyderabad.

Respondents / Petitioners

Counsel for the appellants : GP for Revenue

Counsel for resopondent Nos.1 and 2 : Sri N.Sreedhar Reddy, advocate

Counsel for the respondent No.3 : Sri Ganta Rama Rao, Advocate

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The Court Made the Following ORDER:

(per The Hon'ble The Chief Justice Sri Devinder Gupta)

Writ petition No.4316 of 2003 was disposed of by learned single Judge by the impugned order passed on 26-9-2003 granting part relief to the writ petitioners. Three appeals have been filed against the said order – one by the writ petitioners i.e. Writ Appeal No.1 of 2004, the second by the Municipal Corporation of Hyderabad i.e., Writ Appeal No.444 of 2004 and the third by the District Collector i.e., W.A.Sr.No.56734 of 2004.

Writ petitioners sought to declare the action of the Municipal Corporation of Hyderabad (for short 'MCH') in interfering with their lawful construction activity being under over land in old S.No.12 (new S.No.27/1), bearing premises No.10-5-2-1/8/2/A, Mallepally village, Hyderabad otherwise than in due course of law, as arbitrary and illegal and consequently to declare that the writ petitioners have got valid deemed permission to proceed with the construction work under Section 437 of the Hyderabad Municipal Corporation Act, 1955. During the pendency of the writ petition, petitioners sought amendment to be made inter alia to challenge the proceedings dated 15/17-3-2003 of the 1st respondent. Same was ordered on 13-6-2003. Learned single Judge noticed in his judgment the respective stands taken by the MCH as well as by the District Collector and Mandal Revenue Officer opposing the writ petition on the grounds that petitioners are not entitled to carry out any construction on the scheduled land and more particularly because of the pendency of L.G.C.No.170 of 1997 filed by the Government to an extent of 165 sq yards of land in T.S.No.16, Block K, Ward 36 of Mallepally village pending before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982. MCH also resisted the writ petition on the ground that the order of rejection was valid and there was no question of deemed permission.

The learned single Judge noticed all submissions raised on behalf of the petitioners and the respondents and proceeded to quash and set aside the order of rejection on the ground that this was the fourth round of litigation; MCH should have raised all

objections within the time; They have been rejecting building permission on one ground or the other and that taking of objection must be comprehensive and cannot be piecemeal. On that basis, the order of rejection was set aside by further observing that the writ petitioners had purchased the land under a registered sale deed and thereby acquired title to the property. That being the position, learned single Judge ought to have dealt with the stand of the Mandal Revenue Officer and the District Collector that the writ petitioners are not entitled to make construction pending disposal of the land grabbing case since it was alleged therein that the petitioners are not the owners and have no title to the property which was the subject matter of dispute before the Special Court. The case of MCH is that there is no question of any deemed sanction and the rejection was on valid and lawful grounds and there was no embargo on the MCH. There is no finding recorded by the learned single Judge on the plea of according sanction and that the writ petitioners are entitled to carry on the construction.

After we heard learned counsel for the parties, it is stated that since all parties in the writ petition are aggrieved by the impugned order and grievance of the respondents in the writ petition is that the points raised by them in the counter-affidavit and urged before the learned single Judge have not been met or answered or discussed, it is a fit case where learned single Judge should be directed to decide the case afresh on merits. Learned counsel for the writ petitioners submitted that it should be a limited remand by maintaining the order of the learned single Judge to the extent of setting aside the order of rejection since there is no ground to interfere with such order.

We are not convinced with such submission made by the learned counsel for the writ petitioners on the simple ground that the question of legality and validity of the order of rejection is interwoven with the other pleas set up by the respondents in the writ petition. The said order of rejection, whether is not legal and valid, cannot be decided without considering the pleas of the respondents in the writ petition. For that reason we are of the view that the matter must be sent back to be decided afresh in accordance with law.

Since the writ petitioners are seeking building permission, we are of the view that the writ petition deserves to be heard early by the learned single Judge. Accordingly, we allow the appeals, set aside the impugned order and direct the writ petition to be heard and decided afresh in accordance with law as expeditiously as possible. Writ

petition be listed before the learned single Judge on 19th July, 2004.

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DEVINDER GUPTA, CJ

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G.ROHINI, J

30th June, 2004.

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SECTION OFFICER

To

1. Municipal Corporation of Hyderabad rep., by its Commissioner & Special Officer, at Tank Bund Road, Hyderabad.
2 The District Collector, Hyderabad, District at Hyderabad.
3 The Mandal Revenue Officer, Asifnagar Mandal, Hyderabad District.

4. GP for Revenue

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